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HEWLETT PACKARD COMPANY P O BOX 272400, 3404 E. HARMONY ROAD INTELLECTUAL PROPERTY ADMINISTRATION FORT COLLINS, CO 80527-2400			DAVIS, DAVID DONALD	
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**BEFORE THE BOARD OF PATENT APPEALS
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Technology Center 2600

Application Number: 09/102,207

Filing Date: June 22, 1998

Appellant(s): GOH ET AL.

Douglas L. Weller
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 2, 2005.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The appellant's statement in the brief that certain claims do not stand or fall together is not agreed with because claims 21-30 are not included with the grouping of the claims. As a result, claims 21 and 22 will be included with group 2 and claims 23-30 will be included with group 1.

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

6,532,497	Cromer	3-2003
5903737	Han	5-1999

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3, 5, 6, 8, 12-15 and 19-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Cromer et al (US 6,532,497). As per claim 1, Cromer et al shows in figure 4 and describes in column 3, lines 32-52 a chip 300 for incorporation within a network device connectable to a computer network. The network device includes a host processor 200 and the chip 300 including a media access controller 308 connectable to the computer network. The media access controller 308 providing the chip 300 with access to the computer network independent of the host processor 200.

Figure 4 of Cromer et al also shows a host interface connectable to the host processor 200 and an embedded processor 400 coupled between the host interface and the media access controller 308. Cromer et al discloses in column 3, lines 32-52 that the embedded processor 400 is programmable to function as a manageability web server, communicate with the host interface and obtain manageability information about the network device. The embedded processor 400 further is programmable to send the manageability information to the media access controller 308 for transmission over the computer network. The chip 300, as described in column 3, lines 32-52, performs network management functions independent of the host processor 200.

As per claim 2, the embedded processor 400 of chip 300 is programmable to obtain the manageability information in response to a network request addressed to the manageability web server, as described in column 3, lines 32-52. As per claim 3, the network device, as shown in figure 4, further includes an interchip communications and a compliant device coupled to the interchip communication. The chip 300 includes an interface connectable to the interchip communications. The embedded processor 400 is programmable to communicate via the interchip communication interface to obtain manageability information about the compliant device, as described in column 3, lines 32-52.

As per claim 5, Cromer et al shows in figures 4-5 and describes column 3, line 32 through column 4, line 5 that the embedded processor 400 is also programmable to control the compliant device coupled to the interchip communications. As per claim 6, Cromer et al shows in figures 4-5 and describes column 3, line 32 through column 4, line 5 that the compliant device is a power supply controller and the embedded processor 400 is programmable to control the power supply controller. As per claim 8, Cromer et al shows in figures 4-5 and

describes column 3, line 32 through column 4, line 5 that the embedded processor 400 is programmable to control the compliant device in response to a network request addressed to the manageability web server. As per claim 12, Cromer et al shows in figures 4-5 and describes column 3, line 32 through column 4, line 5 that the embedded processor 400 is programmable to obtain manageability information from the host processor 200.

As per claim 13, Cromer et al shows in figures 4 and 5 and describes in column 3, line 32-5 a network device connectable to a computer network. The network device including interchip communications; a compliant device coupled to the interchip communications; a chip 300 including a media access controller 308 connectable to the computer network; an interchip communications interface connected to the interchip communications and an embedded processor 400 coupled to the interchip communications interface and the media access controller 308.

Figure 5, in particular, of Cromer et al shows a microcontroller that includes non-volatile memory and non-volatile memory 504 programmed with a plurality of executable instructions. The instructions, when executed, instructing the embedded processor 400 to function as a manageability web server, communicate with the interchip communications to obtain manageability information about the compliant device and send the manageability information to the media access controller 308 for transmission over the computer network.

As per claim 14, the instructions instruct the embedded processor 400 to obtain the manageability information from the compliant device in response to network requests addressed to the manageability web server. As per claim 15, Cromer et al shows in figure 4 a host processor 200. The chip 300 includes a host interface coupled to the host processor 200 and the

embedded processor 400, and the instructions instruct the embedded processor 400 to obtain manageability information from the host processor 200.

As per claim 19, Cromer et al shows in figure 5 and discloses in column 3, line 37 through column 4, line 5 the non-volatile memory further stores web page content. As per claim 20, Cromer et al also shows in figure 5 and describes in column 3, line 53 through column 4, line 5 that volatile memory 504 is for storing the manageability information.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102((e), f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 7, 9-11, 18, and 21-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cromer et al (US 6,532,497). As per claim 23, Cromer et al shows in figure 4 and describes

in column 3, lines 32-52 a system including a computer network; a network device including a host processor 200 and a chip 300. Cromer et al shows in figures 4 and 5 the chip 300 including a media access controller 308 coupled to the computer network and an embedded processor 400 coupled to the media access controller 308.

In column 1, lines 40-44 of Cromer et al discloses that processor 400 can be programmed to function as a manageability web server and a network manager coupled to the computer network. Cromer et al shows in figures 4 and 5 and describes in column 3, lines 32-52 that the embedded processor 400 can communicate with the network 14 manager independent of the host processor 200.

As per claim 24, Cromer et al shows in figure 4 and describes column 1, lines 40-44 the network device including a compliant device and with the embedded processor 400 programmable to control the compliant device in response to control requests from the network manager. As per claims 26 and 27, Cromer et al discloses in column 3, lines 15-23 that the compliant device is a power supply controller. The network manager can request the embedded processor 400 to control the power supply controller to shut down, to reboot and turn on the network device at scheduled times.

As per claim 29, Cromer et al discloses column 1, lines 40-43 that the network manager can send a diagnostic program to the embedded processor 400 and request the embedded processor 400 to run the diagnostic program and return to the network manager results obtained by the diagnostic program. As per claim 30, Cromer et al discloses in columns 3, lines 37-52 that the embedded processor is programmable to communicate with host interface and

obtain manageability information from the host processor 200 in response to requests by the network manager.

Cromer et al, however, is silent as to the network manager including a web browser and a plurality of HTML files for instructing the network manager to communicate with the embedded processor in the network device and perform network management of the network device.

Cromer et al, however, is also silent as to the embedded processor controller a fan and performing firmware/BIOS program upgrades. Cromer et al is additionally silent as to the embedded processor utilizing TCP/IP, acting as an *HTTP* web server.

Official notice is taken of the fact that web browsers; HTML files; TCP/IP protocols and HTTP web servers for networks are notoriously old and well known in the art. Official notice is also taken of the fact that fans and programs to perform firmware/BIOS upgrades are notoriously old and well known in the computer art.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to utilize known and commonly used network software, files, protocols and servers as taught in the network art in the network system of Crommer et al. The rationale is as follows: one of ordinary skill in the art at the time the invention was made would have been motivated to utilize known and commonly used network software, files, protocols and servers as taught in the network art so that a networking system is able to integrate and communicate with existing servers and clients in the network.

It also would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide network system of Crommer et al to control a fan and perform upgrades as taught in the art. The rationale is as follows: one of ordinary skill in the art at the

time the invention was made would have been motivated to allow a network to control a fan and perform upgrades, which is well within the purview of a skilled artisan and absent an unobvious result, so that a system is able to be cooled and updated remotely.

6. Claims 4, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cromer et al (US 6,532,497) in view of Han (US 5,903,737). Cromer et al discloses the claimed invention. However, Cromer et al is silent as to the interchip communications including an I²C bus with the compliant device being an I²C-compliant device.

Han discloses in column 2, lines 58-67 I²C serial data communications.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the device of Cromer et al with I²C serial data communications as taught by Ham. The rationale is as follows: one of ordinary skill in the art at the time the invention was made would have been motivated to provide I²C serial data communications so as to provide an apparatus “which can transmit and receive serial data of an inter integrated circuit (IIC or I²C) type utilizing a general microcomputer.” See column 1, lines 6-12 of Han.

(11) *Response to Argument*

Appellant asserts on page 8, starting in line 7, the following:

Cromer thus specifically teaches that logic 400 detects states, creates packets, and sends data over the MII bus to physical layer 304. This is the only functionality that Cromer discloses that is performed by logic 400. Nowhere does Cromer disclose or suggest that logic 400 is programmed to function as a manageability web server. In fact, nowhere does Cromer indicate that logic 400 is able to receive packets or any other communications over a network. Thus, it is clear that Cromer does not disclose or suggest logic is programmed to function as a manageability web server.

The above statements are curious. The *claimed invention* only requires the embedded processor to send manageability information for transmission over the computer network and perform network management functions independent of the host processor. The claims do not require the processor to received packets or any other communications over a network. However, assuming arguendo that the *claimed invention* does in fact require the processor to received packets or any other communications over a network. Figure 4 clearly shows bidirectional arrows indicating bidirectional communications (i.e. send and received packets and other communications) over the network. Therefore, contrary to appellant's incorrect interpretative conclusory statement, processor 400 of Cromer does function as a manageability web server, which is not unlike appellant's *claimed and disclosed invention*.

Appellant asserts on page 9, in the first and second paragraphs the following:

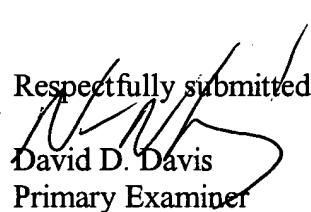
... nowhere does Cromer give any disclosure or suggestion that logic 400 and media access controller ever communicate with each other. There is therefore no disclosure or suggestion in Cromer that logic 400 is programmable to send manageability information to the media access controller 308 for transmission over the computer network. The Examiner's assertion to the contrary has no foundation in the subject matter actually disclosed by Cromer.

In the action mailed January, 12, 2005 it was stated in response to the same assertion presented, *supra*, that Cromer in "figure 4 clearly shows data lines being bi-directional between embedded processor 400 and media access controller (MAC) 308 as required by the pending claims." It is curious that appellant has not traversed (i.e. a formal denial of one material fact that contradicts) the preceding statement. Appellant, however, has chosen to ignore the preceding statement and rely *solely* on the written specification, which appellant purports to be silent on processor 400 communicating with the MAC 308. The disclosure of Cromer includes

more than the written specification. It also includes the drawings. The disclosure, specifically the drawings, contrary to appellants assertion, does in fact show and suggest processor 400 and MAC 308 communicating with each other.

Appellants statements in section D.2.a on page 11 are incorrect. Not only does Cromer show non-volatile memory 504 in figure 5, but Cromer shows microcontroller 502. Microcontrollers include a CPU core and memory (ROM or Flash memory, which is non-volatile memory) for the program, which is a plurality of executable instructions.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

David D. Davis
Primary Examiner
Art Unit 2652

DDD
July 9, 2005

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